Provisions Concerning Advance Tax and Tax Deducted at Source

Learning Objectives

After studying this chapter, you would be able to understand -

- the modes of recovery of income-tax from an assessee
- the provisions governing deduction of tax at source from certain specified income and payments
- the cases where tax is not required to be deducted at source and the conditions to be satisfied for this purpose
- how to avail credit for tax deducted at source
- what is the duty of the person deducting tax
- the consequences of failure to deduct tax at source or make payment of the tax deducted at source
- who are the "persons responsible for paying" tax deducted at source
- when the liability to pay advance tax arises
- how advance tax is computed
- the schedule of instalments for payment of advance tax
- the consequence of non-payment or short-payment of advance tax
- the consequence of deferment of advance tax.

1. Deduction of Tax at Source and Advance Payment [Section 190]

The total income of an assessee for the previous year is taxable in the relevant assessment year. For example, the total income for the P.Y.2014-15 is taxable in the A.Y.2015-16. However, the income-tax is recovered from the assessee in the previous year itself through –

- (1) Tax deduction at source (TDS)
- (2) Tax collection at source (TCS)
- (3) Payment of advance tax

Another mode of recovery of tax is from the employer through tax paid by him under section 192(1A) on the non-monetary perquisites provided to the employee.

These taxes are deductible from the total tax due from the assessee. The assessee, while filing his return of income, has to pay self-assessment tax under section 140A, if tax is due on the total income as per his return of income after adjusting, *inter alia*, TDS and advance tax.

2. Direct Payment [Section 191]

Section 191 provides that in the following cases, tax is payable by the assessee directly –

- (1) in the case of income in respect of which tax is not required to be deducted at source; and
- (2) income in respect of which tax is liable to be deducted but is not actually deducted.

In view of these provisions of section 191, the proceedings for recovery of tax necessarily had to be taken against the assessee whose tax was liable to be deducted, but not deducted.

In order to overcome this difficulty, the *Explanation* to this section provides that if –

- (1) any person, including the principal officer of the company, who is required to deduct tax at source or
- (2) an employer paying tax on non-monetary perguisites under section 192(1A),

does not deduct the whole or part of the tax, or after deducting fails to pay such tax deducted, then such person shall be deemed to be an assessee in default.

However, if the assessee himself has paid the tax, this provision will not apply.

3 Deduction of Tax at Source

3.1 Salary [Section 192]

- (1) This section casts an obligation on every person responsible for paying any income chargeable to tax under the head 'Salaries' to deduct income-tax on the amount payable.
- (2) Such income-tax has to be calculated at the average rate of income-tax computed on the basis of the rates in force for the relevant financial year in which the payment is made, on the estimated total income of the assessee. Therefore, the liability to deduct tax at source in the case of salaries arises only at the time of payment.

- (3) Average rate of income-tax means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.
- (4) However, deduction at a rate lower than that prescribed may be made if a certificate has been obtained under section 197 from the Assessing Officer.
- (5) Every year, the CBDT issues a circular giving details and direction to all employers for the purpose of deduction of tax from salaries payable to the employees during the relevant financial year. These instructions should be followed.
- (6) The concept of payment of tax on non-monetary perquisites has been provided in sections 192(1A) and (1B). These sections provide that the employer may pay this tax, at his option, in lieu of deduction of tax at source from salary payable to the employee. Such tax will have to be worked out at the average rate applicable to aggregate salary income of the employee and payment of tax will have to be made every month along with tax deducted at source on monetary payment of salary, allowances etc.
- (7) Time and mode of payment to Government account of TDS or tax paid under section 192(1A) [Rule 30]
- (a) All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.
- (b) All sums deducted in accordance with Chapter XVII-B by deductors other than a Government office shall be paid to the credit of the Central Government on or before 30th April, where the income or amount is credited or paid in the month of March. In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A).
- (c) In special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192/194A/194D/194H on or before 7th of the month following the quarter, in respect of first three quarters in the financial year and 30th April in respect of the quarter ending on 31st March. The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and 30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.
- (8) In cases where an assessee is simultaneously employed under more than one employer or the assessee takes up a job with another employer during the financial year after his resignation or retirement from the services of the former employer, he may furnish the details of the income under the head "Salaries" due or received by him from the other employer, the tax deducted therefrom and such other particulars to his current employer. Thereupon, the subsequent employer should take such information into consideration and then deduct the tax remaining payable in respect of the employee's remuneration from both the employers put together for the relevant financial year.

- (9) For purposes of deduction of tax out of salaries payable in a foreign currency, the value of salaries in terms of rupees should be calculated at the prescribed rate of exchange as specified in Rule 26 of the Income-tax Rules, 1962.
- (10) In respect of salary payments to employees of Government or to employees of companies, co-operative societies, local authorities, universities, institutions, associations or bodies, deduction of tax at source should be made after allowing relief under section 89(1), where eligible.
- (11) A tax payer having salary income in addition to other income chargeable to tax for that financial year, may send to the employer, the following:
- (i) particulars of such other income;
- (ii) particulars of any tax deducted under any other provision;
- (iii) loss, if any, under the head 'Income from house property'.

The employer shall take the above particulars into account while calculating tax deductible at source.

It is also provided that except in cases where loss from house property has been adjusted against salary income, the tax deductible from salary should not be reduced as a consequence of making the above adjustments.

(12) Sub-section (2C) provides that the employer shall furnish to the employee, a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof. The statement shall be in the prescribed form and manner. This requirement is applicable only where the salary paid/payable to an employee exceeds ₹ 1,50,000. For other employees, the particulars of perquisites/profits in lieu of salary shall be given in Form 16 itself.

3.2 Interest on securities [Section 193]

- (1) This section casts responsibility on every person responsible for paying to a resident any income by way of interest on securities.
- (2) Such person is vested with the responsibility to deduct income-tax at the rates in force from the amount of interest payable.

The rate at which tax is deductible under section 193 is 10%, both in the case of domestic companies and resident non-corporate assessees.

- (3) Tax should be deducted at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.
- (4) However, no tax deduction is to be made from any interest payable:
- (i) on 4¼% National Defence Bonds 1972, where the bonds are held by an individual not being a non-resident;

- (ii) on 4¼% National Defence Loan, 1968 or 4¾% National Defence Loan, 1972, where the interest is payable to an individual;
- (iii) on National Development Bonds;
- (iv) on 7-year National Savings Certificates (IV Issue);
- (v) on debentures issued by any institution or authority or any public sector company or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as notified by the Central Government;
- (vi) on 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980, where the bonds are held by an individual (other than a non-resident), provided that the holders of the bonds make a written declaration that the total nominal value of the bonds held by him or on his behalf did not in either case exceed ₹ 10,000 at any time during the period to which the interest relates;
- (vii) on any security of the Central Government or a State Government;
 - Note It may be noted that tax has to be deducted at source in respect of interest payable on 8% Savings (Taxable) Bonds, 2003, if such interest payable exceeds ₹ 10,000 during the financial year.
- (viii) on any debentures (whether listed or not listed on a recognized stock exchange) issued by the company in which the public are substantially interested to a resident individual or HUF. However,
 - (a) the interest should be paid by the company by an account payee cheque;
 - (b) the amount of such interest or the aggregate thereof paid or likely to be paid during the financial year by the company to such resident individual or HUF should not exceed ₹ 5,000.
- (ix) on securities to LIC, GIC, subsidiaries of GIC or any other insurer, provided
 - (a) the securities are owned by them or
 - (b) they have full beneficial interest in such securities.
- (x) on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.
- (5) In all the above cases, the declaration shall be made by the recipient to the person responsible for paying such interest on securities.
- (6) If the person entitled to receive interest produces a certificate under section 197 from the Assessing Officer to the effect that his total income is either below the taxable limit or is liable to income-tax at a lower rate, the interest on securities shall be paid without any deduction of tax or after deduction of tax at such lower rate, as the case may be.
- (7) Where any income by way of interest on securities is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be

credit of such income to the account of the payee and tax has to be deducted at source.

(8) The account to which such interest is credited may be called "Interest Payable account" or "Suspense account" or by any other name.

3.3 Dividends [Section 194]

- (1) Dividends declared, distributed or paid by a domestic company are exempt in the hands of the shareholder under section 10(34). This includes deemed dividend under sections 2(22)(a) to (d). This is because such dividend attracts dividend distribution tax @ 15% in the hands of the company.
- (2) The TDS provisions under this section are attracted only in respect of deemed dividend referred to in section 2(22)(e), if such dividend exceeds ₹ 2,500 in a year.
- (3) The rate of deduction of tax in respect of such dividend is 10%.
- (4) Individual shareholders, who are residents in India are entitled to receive their dividends from any domestic company without deduction of tax at source by the company in cases where -
- (i) the amount of dividend income received from the company does not exceed ₹ 2500 during the year; and
- (ii) the dividend is paid by an account payee cheque.

The TDS provisions will not apply to dividend receivable by LIC, GIC, its subsidiaries or any other insurer provided the shares are owned by them, or they have full beneficial interest in such shares.

3.4 Interest other than interest on securities [Section 194A]

This section deals with the scheme of deduction of tax at source from interest other than interest on securities. The main provisions are the following:

- (1) This section applies only to interest, other than "interest on securities", credited or paid by assessees other than individuals or Hindu undivided families not subject to tax audit under section 44AB in the immediately preceding financial year. In other words, individuals and HUFs subject to tax audit in the immediately preceding financial year, companies, firms, association of persons, local authorities and artificial juridical persons are under a legal obligation to deduct tax at source in respect of the interest other than "interest on securities" paid by them.
- (2) These provisions apply only to interest paid or credited to residents. In respect of payments to non-residents, the provisions are contained under section 195.
- (3) The deduction of tax must be made at the time of crediting such interest to the payee or at the time of its payment in cash or by any other mode, whichever is earlier.
- (4) Where any such interest is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account

of the payee and the tax has to be deducted at source.

(5) The account to which such interest is credited may be called "Interest Payable account" or "Suspense account" or by any other name.

The CBDT has, vide *Circular No.3/2010 dated 2.3.2010*, given a clarification regarding deduction of tax at source on payment of interest on time deposits under section 194A by banks following Core-branch Banking Solutions (CBS) software. It has been clarified that *Explanation* to section 194A is not meant to apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software. It has been further clarified that since no constructive credit to the depositor's / payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only. In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's / payee's requirement or on maturity or on encashment of time deposits, whichever event takes place earlier, whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

- (6) The deduction of tax at source is to be made in all cases where the amount of income by way of interest or, as the case may be, the aggregate of the amounts of interest credited or paid or likely to be credited or paid during the financial year to the account of or to the payee or any other person on his behalf is more than ₹ 5,000.
- (7) The rate at which the deduction is to be made are given in Part II of the First Schedule to the Annual Finance Act. The rate at which tax is to be deducted is 10% both in the case of resident non-corporate assessees and domestic companies.
- (8) No deduction of tax shall be made in the following cases:
- (a) If the aggregate amount of interest paid or credited during the financial year does not exceed ₹ 5,000.

This limit is increased to ₹ 10,000 in respect of interest paid on –

- (i) time deposits with a banking company;
- (ii) time deposits with a co-operative society engaged in banking business; and
- (iii) deposits with post office under notified schemes.

In all other cases, the limit would continue to be ₹ 5,000.

The limit will be calculated with respect to income credited or paid by a branch of a bank or a co-operative society or a public company in case of:

- (i) time deposits with a bank
- (ii) time deposits with a co-operative society carrying on the business of banking; and

- (iii) deposits with housing finance companies, provided:
 - they are public companies formed and registered in India
 - their main object is to carry on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

The above ceiling will operate:

- (i) on a branch of a bank;
- (ii) with reference to only time deposits.

Hence, the interest on all other types of account such as savings account, recurring deposits etc., payable by a branch will have to be excluded to determine whether the interest exceeds ₹ 10,000 or not. However, in respect of time deposits, interest on all such time deposits maintained with a branch has to be aggregated.

- (b) Interest paid or credited by a firm to any of its partners;
- (c) Interest paid or credited by a co-operative society to a member there of or any other co-operative society;
- (d) Interest paid or credited in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf;
- (e) Interest income credited or paid in respect of deposits (other than time deposits made on or after 1.7.1995) with
 - (i) a bank to which the Banking Regulation Act, 1949 applies; or
 - (ii) a co-operative society engaged in carrying on the business of banking.
- (f) Interest credited or paid in respect of deposits with primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank.
- (g) Interest income credited or paid by the Central Government under any provisions of the Income-tax Act, 1961, the Estate Duty Act, the Wealth-tax Act, 1957, the Gift-tax Act, the Companies (Profits) Surtax Act or the Interest Tax Act.
- (h) Interest paid or credited to the following entities:
 - banking companies, or co-operative societies engaged in the business of banking, including co-operative land mortgage' banks;
 - (2) financial corporations established under any Central, State or Provincial Act.
 - (3) the Life Insurance Corporation of India.
 - (4) companies and co-operative societies carrying on the business of insurance.
 - (5) the Unit Trust of India: and

- (6) notified institution, association, body or class of institutions, associations or bodies.
 (National Skill Development Fund has been notified by the Central Government for this purpose)
- (i) income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed ₹ 50,000.
- (j) income paid or payable by an infrastructure capital company or infrastructure capital fund or public sector company in relation to a zero coupon bond issued on or after 1.6.2005 [Refer Chapter 1 for definitions of "infrastructure capital company" and "infrastructure capital fund" as per sections 2(26A) and 2(26B), respectively].
- (9) The expression "time deposits" [for the purpose of (8)(a) above] means the deposits, excluding recurring deposits, repayable on the expiry of fixed periods.
- (10) The time for making the payment of tax deducted at source would reckon from the date of credit of interest made constructively to the account of the payee.

3.5 Winnings from lotteries, crossword puzzles and horse races [Sections 194B and 194BB]

- (1) Any income of a casual and non-recurring nature of the type of winnings from lotteries, crossword puzzles, card game and other game of any sort, races including horse races, etc. will be charged to income-tax at a flat rate of 30% [Section 115BB].
- (2) According to the provisions of section 194B, every person responsible for paying to any person, whether resident or non-resident, any income by way of winnings from lottery or crossword puzzle or card game and other game of any sort, is required to deduct income-tax therefrom at the rate of 30% if the amount of payment exceeds ₹ 10,000.
- (3) Further, in a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.
- (4) Section 194BB casts responsibility on the following persons to deduct tax at source -
- (i) a bookmaker; or
- (ii) a person to whom a license has been granted by the Government under any law for the time being in force -
 - (a) for horse racing in any race course; or
 - (b) for arranging for wagering or betting in any race course.
- (5) The obligation to deduct tax at source under section 194BB arises when the abovementioned persons make payment of any income by way of winnings from any horse race in excess of ₹ 5,000. The rate applicable for deduction of tax at source is 30%.

- (6) Tax will have to be deducted at source from winnings from horse races even though the winnings may be paid to the person concerned in installments of less than ₹ 5,000. Similarly, in cases where the book-maker or other person responsible for paying the winnings, credits such winnings and debits the losses to the individual account of the punter, the set off of the loss against the income would be treated for this purpose as a constructive payment of the income.
- (7) In the context of the provisions of section 194BB, the expression 'any horse race' used therein must be taken to include, wherever the circumstances so necessitate, more than one horse race. Therefore, winnings by way of jack pot would also fall within the scope of section 194BB.

3.6 Payments to contractors and sub-contractors [Section 194C]

- (1) Section 194C provides for deduction of tax at source from the payment made to resident contractors and sub-contractors.
- (2) Any person responsible for paying any sum to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the Central Government, a State Government, local authority, statutory corporation, a company, co-operative society, any statutory authority dealing with housing accomodation, any society registered under the Societies Registration Act, 1860, any trust or any university or any firm or any Government of a foreign State or foreign enterprise or any association or body established outside India or an individual, HUF, AOP or BOI subject to tax audit under section 44AB in the immediately preceding financial year must deduct incometax at the prescribed rate from such sum at the time of credit or payment, whichever is earlier.

Payments made by Individuals, HUFs, AOPs and BOIs to a contractor would attract TDS if their total sales/turnover exceeds ₹ 100 lakh (in case of business) and gross receipts exceed ₹ 25 lakh (in case of profession) in the immediately preceding financial year. However, relief has been provided in respect of payments made by individuals/HUFs to a contractor exclusively for personal purposes.

- (3) The rate of TDS under section 194C on payments to contractors would be 1%, where the payee is an individual or HUF and 2% in respect of other payees. The same rates of TDS would apply for both contractors and sub-contractors.
- (4) Further, in respect of payment to transport contractors and sub-contractors engaged in the business of plying, leasing and hiring goods carriages, TDS provisions would not apply if they furnish their PAN to the deductor.
- (5) The applicable rates of TDS under section 194C are as follows –

Payee	TDS rate
Individual / HUF contractor/sub-contractor	1%
Other than individual / HUF contractor/sub-contractor	2%
Contractor in transport business (if PAN is furnished)	Nil
Sub-contractor in transport business (if PAN is furnished)	Nil

(6) No deduction will be required to be made if the consideration for the contract does not exceed ₹ 30,000. However, to prevent the practice of composite contracts being split up into contracts valued at less than ₹ 30,000 to avoid tax deduction, it has been provided that tax will be required to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 75,000 in the aggregate during a financial year.

Therefore, even if a single payment to a contractor does not exceed ₹ 30,000, TDS provisions under section 194C would be attracted where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid to the contractor during the financial year exceeds ₹ 75,000.

Illustration 1

ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y.2014-15 –

₹ 15,000 on 1.5.2014

₹ 25,000 on 1.8.2014

₹ 30,000 on 1.12.2014

On 1.3.2015, a payment of ₹ 28,000 is due to Mr.X on account of a contract work.

Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr.X.

Solution

In this case, the individual contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the P.Y.2014-15 exceeds ₹ 75,000 (on account of the last payment of ₹ 28,000, due on 1.3.2015, taking the total from ₹ 70,000 to ₹ 98,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted@1% on the entire amount of 98,000 from the last payment of ₹ 28,000 and the balance of ₹ 27,020 (i.e. ₹ 28,000 – ₹ 980) has to be paid to Mr. X.

- (7) Work includes -
- (a) advertising;
- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- (c) carriage of goods or passengers by any mode of transport other than by railways;
- (d) catering;
- (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.

However, "work" shall not include manufacturing or supplying a product according to the

requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a contract for 'sale'. However, this will not be applicable to a contract which does not entail manufacture or supply of an article or thing (e.g. a construction contract).

It may be noted that the term "work" would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In such a case, tax shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.

- (8) No deduction is required to be made from the sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if he furnishes his PAN to the deductor.
- (9) However, for this purpose, it is necessary to produce a declaration within the prescribed time to the concerned person paying or crediting such sum. Such declaration should be in the prescribed form and manner.
- (10) Goods carriage means -
- (i) any motor vehicle constructed or adapted for use solely for the carriage of goods; or
- (ii) any motor vehicle not so constructed or adapted, when used for the carriage of goods.

The term "motor vehicle" does not include vehicles having less than four wheels and with engine capacity not exceeding 25cc as well as vehicles running on rails or vehicles adapted for use in a factory or in enclosed premises.

- (11) The substance of the provisions is explained hereunder:
- (i) The deduction of income-tax at source from payments made to non-resident contractors will be governed by the provisions of section 195.
- (ii) The deduction of income-tax will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, the section will apply only in relation to 'works contracts' and 'labour contracts' and will not cover contracts for sale of goods.
- (iii) Contracts for rendering professional services by lawyers, physicians, surgeons, engineers, accountants, architects, consultants etc., cannot be regarded as contracts for carrying out any "work" and, accordingly, no deduction of income-tax is to be made from payments relating to such contracts under this section. Separate provisions for fees for professional services have been made under section 194J.
- (iv) The deduction of income-tax must be made at the time of credit of the sum to the account of the contractor, or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

(12) Deduction of tax at source on payment of gas transportation charges by the purchaser of natural gas to the seller of gas [Circular No. 9/2012 dated 17.10.2012]

In response to the representations received by CBDT, on the difficulties being faced in the matter of tax deduction at source on Gas Transportation Charges paid by the purchasers of Natural gas to the owners/sellers of gas, CBDT has, through this Circular, clarified that in case the Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in section 194C. Therefore, in such circumstances, the provisions of Chapter XVIIB are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different modes of transportation of gas by Owner/Seller will not alter the position.

However, transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and tax shall be deductible at source on such payment to the third party at the applicable rates.

3.7 Insurance Commission [Section 194D]

- (1) Section 194D casts responsibility on any person responsible for paying to a resident any income by way of remuneration or reward.
- (2) Such income may be by way of insurance commission or other remuneration in consideration for soliciting or procuring insurance business (including the business relating to the continuance, renewal or revival of policies of insurance).
- (3) Such person is required to deduct income-tax at the rate of 10%, both in the case of resident non-corporate assessees and domestic companies.
- (4) The deduction is to be made at the time of the credit of the income to the account of the payee or at the time of making the payment (by whatever mode) to the payee, whichever is earlier.
- (5) The tax under this section has to be deducted at source only if the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year to the account of the payee exceeds ₹ 20,000.

3.8 Payment in respect of life insurance policy [Section 194DA]

- (i) Under section 10(10D), any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfillment of conditions specified under the said section.
- (ii) Consequently, the sum received under a life insurance policy which does not fulfill the conditions specified under section 10(10D) is taxable.

- (iii) For ensuring a proper mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempt under section 10(10D), new section 194DA has been inserted to provide for deduction of tax at the rate of 2% on any sum paid to a resident under a life insurance policy, including the sum allocated by way of bonus, which are not exempt under section 10(10D).
- (iv) However, tax deduction is required only if the payment or aggregate payment in a financial year to an assessee is ₹ 1,00,000 or more. This is for alleviating the compliance burden on the small tax payers.

Illustration 2

Examine the applicability of the provisions for tax deduction at source under section 194DA in the above cases -

- (i) Mr.X, a resident, is due to receive \ref{thmu} 4.50 lakes on 31.3.2015, towards maturity proceeds of LIC policy taken on 1.4.2012, for which the sum assured is \ref{thmu} 4 lakes and the annual premium is \ref{thmu} 1,25,000.
- (ii) Mr.Y, a resident, is due to receive $\ref{2.20}$ lakes on 31.3.2015 on LIC policy taken on 1.4.2010, for which the sum assured is $\ref{2.20}$ lakes and the annual premium is $\ref{3.500}$.
- (iii) Mr.Z, a resident, is due to receive ₹ 95,000 on 1.10.2014 towards maturity proceeds of LIC policy taken on 1.10.2010 for which the sum assured is ₹ 90,000 and the annual premium was ₹ 19,000.

Answer

- (i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken on 1.4.2012, the maturity proceeds of ₹ 4.50 lakhs are not exempt under section 10(10D) in the hands of Mr.X. Therefore, tax is required to be deducted@2% under section 194DA on the maturity proceeds of ₹ 4.50 lakhs payable to Mr.X.
- (ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of \ref{thmu} 2.20 lakhs due to Mr.Y would be exempt under section 10(10D) in his hands. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr.Y.
- (iii) Even though the annual premium exceeds 20% of sum assured in respect of a policy taken before 1.4.2012, and consequently, the maturity proceeds of ₹ 95,000 would not be exempt under section 10(10D) in the hands of Mr.Z, the tax deduction provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

3.9 Payments to non-resident sportsmen or sports association [Section 194E]

(1) This section provides for deduction of tax at source in respect of any income referred to in section 115BBA payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution.

- (2) Deduction of tax at source @20% should be made by the person responsible for making the payment.
- (3) Such tax deduction should be at the time of credit of such income to the account of the payee or at the time of payment there of in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.
- (4) The following are the income referred to in section 115BBA -
- (i) income received or receivable by a non-resident sportsman (including an athlete) by way of -
 - (a) participation in any game or sport in India (However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein); or
 - (b) advertisement; or
 - (c) contribution of articles relating to any game or sport in India in newspapers, magazines or journals.
- (ii) Guarantee amount paid or payable to a non-resident sports association or institution in relation to any game or sport played in India. However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein.
- (iii) income received or receivable by a non-resident entertainer (who is not a citizen of India) from his performance in India.

3.10 Payments in respect of deposits under National Savings Scheme etc. [Section 194EE]

- (1) The person responsible for paying any amount from National Savings Scheme Account under section 80CCA shall deduct income-tax thereon at the rate of 20% at the time of payment.
- (2) However, no such deduction shall be made where the amount of payment or the aggregate amount of payments in a financial year is less than ₹ 2,500.
- (3) The provisions of this section shall not apply to the payments made to the heirs of the assessee.

3.11 Repurchase of units by Mutual Fund or Unit Trust of India [Section 194F]

A person responsible for paying to any person any amount on account of repurchase of units covered under section 80CCB(2) shall deduct tax at source at the rate of 20% at the time of payment of such amount.

3.12 Commission etc. on the sale of lottery tickets [Section 194G]

- (1) Under section 194G, the person responsible for paying any income by way of commission, remuneration or prize (by whatever name called) on lottery tickets in an amount exceeding \ref{total} 1,000 shall deduct income-tax thereon at the rate of 10%.
- (2) Such deduction should be made at the time of credit of such income to the account of the payee or at the time of payment of such income by cash, cheque, draft or any other mode, whichever is earlier.

(3) Where any such income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

3.13 Commission or brokerage [Section 194H]

- (1) Any person, not being an individual or a Hindu undivided family not subject to tax audit under section 44AB in the immediately preceding financial year, who is responsible for paying any income by way of commission (other than insurance commission) or brokerage to a resident shall deduct income tax at the rate of 10%.
- (2) The deduction shall be made at the time such income is credited to the account of the payee or at the time of payment in cash or by issue of cheque or draft or by any other mode, whichever is earlier.
- (3) Even where income is credited to some other account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit to the account of the payee for the purposes of this section.
- (4) No deduction is required if the amount of such income or the aggregate of such amount does not exceed ₹ 5,000 during the financial year.
- (5) "Commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered, or for any services in the course of buying or selling of goods, or in relation to any transaction relating to any asset, valuable article or thing, other than securities.
- (6) However, this section is not applicable to professional services. "Professional Services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as notified by the CBDT for the purpose of compulsory maintenance of books of account under section 44AA.
- (7) Further, there would be no requirement to deduct tax at source on commission or brokerage payments by BSNL or MTNL to their public call office (PCO) franchisees.

3.14 Rent [Section 194-I]

- (1) Any person, other than an individual or a HUF not subject to tax audit under section 44AB in the immediately preceding year, who is responsible for paying to a resident any income by way of rent shall deduct income tax at the rate of:
- (i) 2% in respect of rent for plant, machinery or equipment;
- (ii) 10% in respect of other rental payments (i.e., rent for use of any land or building, including factory building, or land appurtenant to a building, including factory building, or furniture or fixtures).

- (2) This deduction is to be made at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.
- (3) No deduction need be made where the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of the payee does not exceed ₹ 1,80,000.
- (4) "Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any –
- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee.

(5) Where any such income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section will apply accordingly.

Applicability of TDS provisions under section 194-I to payments made by the customers on account of cooling charges to the cold storage owners.

CBDT Circular No.1/2008 dated 10.1.2008 provides clarification regarding applicability of provisions of section 194-I to payments made by the customers on account of cooling charges to the cold storage owners.

The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194-C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.

Applicability of TDS provisions under section 194-I to service tax component of rental income

CBDT *Circular No.4/2008 dated 28.4.2008* provides clarification on deduction of tax at source (TDS) on service tax component of rental income under section 194-I.

As per the provisions of 194-I, tax is deductible at source on income by way of rent paid to any resident. Further, rent has been defined in 194-I to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee.

Service tax paid by the tenant doesn't partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax.

Non-deduction of tax at source on the service tax component comprised in payments made to residents, if the service-tax component is indicated separately

The CBDT had issued Circular No.4/2008 dated 28.4.2008 clarifying that tax is to be deducted at source under section 194-I, on the amount of rent paid/payable without including the service tax component. However, this Circular was silent regarding deduction of tax at source on the service tax component of other payments on which TDS provisions are applicable.

Accordingly, in exercise of the powers conferred under section 119, the Board has, vide Circular No.1/2014 dated 13.1.2014, clarified that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid/payable without including such service tax component.

3.15 Payment on transfer of certain immovable property other than agricultural land [Section 194-IA]

(i) Under section 139A read with Rule 114B, quoting of Permanent Account Number (PAN) in documents pertaining to purchase or sale of immovable property for value of ₹ 5 lakh or more is mandatory.

- (ii) However, the information furnished in Annual Information Returns by the Registrar/Sub-Registrar reveal non-quoting or quoting of invalid PAN in the documents relating to transfer of property by a sizable number of the purchasers or sellers of immovable properties, valued at ₹ 30 lakh or more, during the financial year 2011-12.
- (iii) Chapter XVII-B of the Income-tax Act, 1961 requires tax to be deducted at source on certain specified payments made to residents by way of salary, interest, rent, commission, brokerage, fees for professional and technical services, royalty etc.

In case of transfer of immovable property by a non-resident, the TDS provisions under section 195 are attracted in the hands of the transferee. However, in case of transfer of immovable property by residents, there is no requirement to deduct tax at source, the only exception being a case of compulsory acquisition of immovable property (other than agricultural land) in respect of which tax deduction is required under section 194LA.

- (iv) For the twin purposes of having a reporting mechanism of transactions in the real estate sector and also collecting tax at the earliest point of time, section 194-IA was inserted by the Finance Act, 2013. It requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of such sum, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to a resident transferor, whichever is earlier.
- (v) However, tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property is less than ₹ 50 lakh.
- (vi) Further, since tax deduction at source for compulsory acquisition of immovable property is covered under section 194LA, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.
- (vii) The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IA.

Time and mode of payment of tax deducted at source under section 194-IA to the credit of Central Government, furnishing challan-cum-statement and TDS Certificate [Rules 30, 31A & 31] [Notification No. 39/2013 dated 31.05.2013]

- (i) Such sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of seven days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No.26QB [Rule 30].
- (ii) The amount so deducted has to be deposited to the credit of the Central Government by electronic remittance within the above mentioned time limit, into RBI, SBI or any authorized bank [Rule 30].
- (iii) Every person responsible for deduction of tax under section 194-IA shall also furnish to the DGIT (Systems) or any person authorized by him, a challan-cum-statement in Form No.26QB electronically within seven days from the end of the month in which the deduction is made [Rule 31A].

(iv) Every person responsible for deduction of tax under section 194-IA shall furnish the TDS certificate in Form No.16B to the payee within 15 days from the due date for furnishing the challan-cumstatement in Form No.26QB under Rule 31A, after generating and downloading the same from the web portal specified by the DGIT (Systems) or the person authorized by him [Rule 31].

Illustration 3

Mr. X sold his house property in Bangalore as well as his rural agricultural land for a consideration of \ref{thmu} 60 lakh and \ref{thmu} 15 lakh, respectively, to Mr. Y on 1.8.2014. He has purchased the house property and the land in the year 2012 for \ref{thmu} 40 lakh and \ref{thmu} 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 1.8.2014, is \ref{thmu} 85 lakh and \ref{thmu} 20 lakh for the house property and rural agricultural land, respectively. Determine the tax implications in the hands of Mr. X and Mr. Y and the TDS implications, if any, in the hands of Mr. Y, assuming that both Mr. X and Mr. Y are resident Indians.

Solution

(i) Tax implications in the hands of Mr.X As per section 50C, the stamp duty value

As per section 50C, the stamp duty value of house property (i.e. ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 45 lakh (i.e., ₹ 85 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2015-16.

Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.

(ii) Tax implications in the hands of Mr.Y

In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(vii), if such difference exceeds ₹ 50,000.

Therefore, in this case ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr.Y under section 56(2)(vii).

Since agricultural land is not a capital asset, the provisions of section 56(2)(vii) are not attracted in respect of receipt of agricultural land for inadequate consideration, since the definition of "property" under section 56(2)(vii) includes only capital assets specified thereunder.

(iii) TDS implications in the hands of Mr.Y

Since the sale consideration of house property exceeds \ref{eq} 50 lakh, Mr.Y is required to deduct tax at source under section 194-IA. The tax to be deducted under section 194-IA would be \ref{eq} 60,000, being 1% of \ref{eq} 60 lakh.

TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

3.16 Fees for professional or technical services [Section 194J]

- (1) Every person, other than an individual or Hindu undivided family not subject to tax audit under section 44AB in the immediately preceding financial year, who is responsible for paying to a resident any sum by way of –
- (i) fees for professional services; or
- (ii) fees for technical services; or
- (iii) any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or
- (iv) royalty, or
- (v) non-compete fees referred to in section 28(va)

shall deduct tax at source at the rate of 10%.

- (2) The deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.
- (3) No tax deduction is required if the amount of fees or the aggregate of the amounts of fees credited or paid or likely to be credited or paid during a financial year does not exceed ₹ 30,000 in the case of fees for professional services, ₹ 30,000 in the case of fees for technical services, ₹ 30,000 in the case of royalty and ₹ 30,000 in the case of non-compete fees.

The limit of ₹ 30,000 under section 194J is applicable separately for fees for professional services, fees for technical services, royalty and non-compete fees referred to in section 28(va). It implies that if the payment to a person towards each of the above is less than ₹ 30,000, no tax is required to be deducted at source, even though the aggregate payment or credit exceeds ₹ 30,000. However, there is no such exemption limit for deduction of tax on any remuneration or fees or commission payable to director of a company.

Illustration 4

XYZ Ltd. makes a payment of ₹ 28,000 to Mr. Ganesh on 2.8.2014 towards fees for professional services and another payment of ₹ 25,000 to him on the same date towards fees for technical services. Discuss whether TDS provisions under section 194J are attracted.

Answer

TDS provisions under section 194J would not get attracted, since the limit of ₹ 30,000 is applicable for fees for professional services and fees for technical services, separately. It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the P.Y.2014-15.

(4) An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial

year in which such sum by way of fees for professional or technical services is credited or paid shall be liable to deduct income-tax under this sub-section.

- (5) However, such individual or Hindu Undivided family, shall not be liable to deduct incometax on the sum payable by way of fees for professional services, in case such sum is credited or paid exclusively for personal purposes.
- (6) Where any fees for professional or technical services is credited to any account, whether called suspense account or by any other name, in the books of accounts of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and tax has to be deducted accordingly.
- (7) "Professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA or of this section.
- (8) Other professions notified for the purposes of section 44AA are as follows:
- (a) Profession of "authorised representatives";
- (b) Profession of "film artist";
- (c) Profession of "company secretary".
- (9) The CBDT has notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:
- (a) Sports Persons,
- (b) Umpires and Referees,
- (c) Coaches and Trainers,
- (d) Team Physicians and Physiotherapists,
- (e) Event Managers,
- (f) Commentators,
- (g) Anchors and
- (h) Sports Columnists.
- (10) Accordingly, the requirement of TDS as per section 194J would apply to all the aforesaid professions. The term "profession", as such, is of a very wide import. However, the term has been defined in this section exhaustively. For the purposes of TDS, therefore, all other professions would be outside the scope of section 194J. For example, this section will not apply to professions of teaching, sculpture, painting etc. unless they are notified.
- (11) Explanation (b) to section 194J provides that the term 'fees for technical services' shall have the same meaning as in Explanation 2 to section 9(1)(vii). The term 'fees for technical services' as defined in Explanation 2 to section 9(i)(vii) means any consideration (including

any lump sum consideration) for rendering of any of the following services:

- (i) Managerial services;
- (ii) Technical services;
- (iii) Consultancy services;
- (iv) Provision of services of technical or other personnel.

It is expressly provided that the term 'fees for technical services' will not include following types of consideration:

- Consideration for any construction, assembly, mining or like project, or
- (ii) Consideration which is chargeable under the head 'Salaries'.
- (12) The CBDT has, through *Circular No.8/2009 dated 24.11.2009*, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

Consequently, all such past transactions between TPAs and hospitals would fall within the provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee-indefault in respect of such tax and also liable for charging of interest under section 201(1A).

However, no proceedings under section 201 may be initiated after the expiry of six years from the end of the financial year in which payments have been made without deducting tax at source etc. by the TPA's. Further, the tax demand arising out of section 201(1) in situations arising above, may not be enforced if the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee-assessee (hospitals etc.). A certificate from the auditor of the deductee-assessee stating that the tax and interest due from deductee-assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under section 201(1A) till payment of taxes by the deductee-assessee or liability for penalty under section 271C, as the case may be.

(13) Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)

As per section 9(1)(vi), any income payable by way of royalty in respect of any right, property or information is deemed to accrue or arise in India. The term "royalty" means consideration for transfer of all or any right in respect of certain rights, property or information. There have

been conflicting court rulings on the interpretation of the definition of royalty, on account of which there was a need to resolve the following issues –

Does consideration for use of computer software constitute royalty?

- (i) Is it necessary that the right, property or information has to be used directly by the payer?
- (ii) Is it necessary that the right, property or information has to be located in India or control or possession of it has to be with the payer?
- (iii) What is the meaning of the term "process"?

In order to resolve the above issues arising on account of conflicting judicial decisions and to clarify the true legislative intent, *Explanations 4, 5 & 6* have been inserted with retrospective effect from 1st June, 1976.

Explanation 4 clarifies that the consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Consequently, the provisions of tax deduction at source under section 194J and section 195 would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty.

Note - The Central Government has, vide *Notification No.21/2012 dated 13.6.2012*, effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if -

- (1) the software is acquired in a subsequent transfer without any modification by the transferor;
- (2) tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and
- (3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

3.17 Payment of compensation on acquisition of certain immovable property [Section 194LA]

- (1) Section 194LA provides for deduction of tax at source by a person responsible for paying to a resident any sum in the nature of –
- (i) compensation or the enhanced compensation or
- (ii) the consideration or the enhanced consideration

on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land).

- (2) Immovable property means any land (other than agricultural land) or any building or part of a building.
- (3) The amount of tax to be deducted is 10% of such sum mentioned in (1) above.
- (4) The tax should be deducted at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.
- (5) No tax is required to be deducted where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed ₹ 2 lakh.

3.18 Income by way of interest from Infrastructure Debt Fund [Section 194LB]

- (1) Interest income received by a non-resident or a foreign company from notified infrastructure debt funds set up in accordance with the prescribed guidelines would be subject to tax at a concessional rate of 5% under section 115A on the gross amount of such interest income as compared to tax @ 20% on other interest income of non-resident. The concessional rate of tax is expected to give a fillip to infrastructure and encourage inflow of long-term foreign funds to the infrastructure sector
- (2) Accordingly, tax would be deductible @ 5% on interest paid/credited by such fund to a non-resident/foreign company. The person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @5%.

3.19 Income by way of interest from an Indian company [Section 194LC]

- (i) Interest paid by an Indian company *or business trust*¹ to a foreign company or a non-corporate non-resident in respect of borrowing made in foreign currency from sources outside India between 1.7.2012 and *30.6.2017* would be subject to tax at a concessional rate of 5% on gross interest (as against the rate of 20% of gross interest applicable in respect of other interest received by a non-corporate non-resident or foreign company from Government or an Indian concern on money borrowed or debt incurred by it in foreign currency).
- (ii) To avail this concessional rate, the borrowing should be from a source outside India under a loan agreement at any time between 1.7.2012 and 30.6.2017 or by way of issue of long-term infrastructure bonds during the period between 1.7.2012 and 30.9.2014 or by way of issue of any long-term bond, including long-term infrastructure bonds during the period between 1.10.2014 and 30.6.2017 and approved by the Central Government in this behalf.

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¹ Business trust means a trust registered as an Infrastructure Investment Trust or a Real Estate Investment Trust, the units of which are required to be listed on a recognized stock exchange, in accordance with the regulations made under the SEBI Act, 1992 and notified by the Central Government in this behalf. The taxation provisions in relation to business trust will be dealt with at the Final level.

- (iii) The interest to the extent the same does not exceed the interest calculated at the rate approved by the Central Government, taking into consideration the terms of the loan or the bond and its repayment, will be subject to tax at a concessional rate of 5%.
- (iv) Such interest paid by an Indian company to a non-corporate non-resident or a foreign company would be subject to TDS@5% under section 194LC.
- (v) Further, levy of higher rate of TDS@20% under section 206AA in the absence of PAN would not be attracted in respect of payment of interest on long-term bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.
- 3.20 Interest on Government securities or rupee-denominated bonds of an Indian company payable to a Foreign Institutional Investor (FII) or a Qualified Foreign Investor (QFI) [Section 194LD]
- (i) Section 194LD provides that any income by way of interest payable during the period between 1.6.2013 and 31.5.2015 in respect of investment made by an FII or QFI in a rupee denominated bond of an Indian company or a Government security, shall be subject to tax deduction at source at a concessional rate of 5% (as against the rate of 20% of interest applicable in respect of other interest received by a QFI or FII).
- (ii) The interest to the extent the same does not exceed the interest calculated at the rate notified by the Central Government in this behalf will be subject to tax deduction at a concessional rate of 5%.
- (iii) Any person who is responsible for paying to a person being a FII or a QFI, any such interest shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon@5%.
- (iv) FII refers to Foreign Institutional Investors specified by the Central Government by notification in the Official Gazette.
- (v) QFI refers to Qualified Foreign Investors i.e. Foreign Investors, being non-residents, who meet certain KYC requirements under SEBI laws and are hence permitted to invest in equity and debt schemes of Mutual Funds, thereby enabling Indian Mutual Funds to have direct access to foreign investors and widen the class of foreign investors in Indian equity and debt market. QFI does not include FIIs.

3.21 Other sums (payable to non-residents) [Section 195]

(1) Any person responsible for paying interest (other than interest referred to in section 194LB or section 194LC or section 194LD) or any other sum chargeable to tax (other than salaries) to a non-resident or to a foreign company is liable to deduct tax at source at the rates prescribed by the relevant Finance Act. Such persons are also required to furnish the information relating to payment of any sum in such form and manner as may be prescribed by the CBDT.

Under section 195(1), the obligation to deduct tax at source from interest and other payments to a non-resident, which are chargeable to tax in India, is on "any person responsible for

paying to a non-resident or to a foreign company". The words "any person" used in section 195(1) is intended to include both residents and non-residents. Therefore, a non-resident person is also required to deduct tax at source before making payment to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. Therefore, if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident.

Explanation 2 clarifies that the obligation to comply with section 195(1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has:-

- (a) a residence or place of business or business connection in India; or
- (b) any other presence in any manner whatsoever in India.
- (2) In order to subject an item of income to deduction of tax under this section the payee must be a non-resident or a foreign company.
- (3) The tax is to be deducted at source at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.
- (4) Where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee.
- (5) The statutory obligation imposed under this section would apply for the purpose of deduction of tax at source from any sum being income assessable to tax (other than salary income) in the hands of the non-resident/foreign company. However, no deduction shall be made in respect of any dividends declared/distributed/paid by a domestic company, which is exempt in the hands of the shareholders under section 10(34).
- (6) Payment to a non-resident by way of royalties and payments for technical services rendered in India are common examples of sums chargeable under the provisions of the Act to which the liability for deduction of tax at source would apply.
- (7) In the case of interest payable by the Government or a public sector bank within the meaning of section 10(23D) or a public financial institution within the meaning of section 10(23D), deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.
- (8) Specified class or classes of persons, making payment to the non-resident, to mandatorily make application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax [Section 195(7)]
- (i) Under section 195(1), any person responsible for paying to a non-corporate non-resident or to a foreign company, any interest or any other sum chargeable under the provisions of the Act (other than salary), has to deduct tax at source at the rates in force.

- (ii) Under section 195(2), where the person responsible for paying any such sum chargeable to tax under the Act (other than salary) to a non-resident, considers that the whole of such sum would not be income chargeable in the hands of the recipient, he <u>may</u> make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable. When the Assessing Officer so determines, the appropriate proportion, tax shall be deducted under section 195(1) only on that proportion of the sum which is so chargeable.
- (iii) Consequent to the retrospective amendments in section 2(47), section 2(14) and section 9(1), sub-section (7) in section 195 provides that, notwithstanding anything contained in sections 195(1) and 195(2), the CBDT may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-corporate non-resident or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable to tax. Where the Assessing Officer determines the appropriate proportion of the sum chargeable, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.
- (iv) Consequently, where the CBDT specifies a class of persons or cases, the person responsible for making payment to a non-corporate non-resident or a foreign company in such cases has to mandatorily make an application to the Assessing Officer, whether or not such payment is chargeable under the provisions of the Act.

(9) Procedure for refund of TDS under section 195 to the person deducting tax in cases where tax is deducted at a higher rate prescribed in the DTAA

The CBDT has, through Circular No.7/2011 dated 27.9.2011, modified Circular No.07/2007, dated 23.10.2007 which laid down the procedure for refund of tax deducted at source under section 195 of the Income-tax Act, 1961 to the person deducting tax at source from the payment to a non-resident. The said Circular allowed refund to the person making payment under section 195 in the circumstances indicated therein as the income does not accrue to the non-resident or if the income is accruing, no tax is due or tax is due at a lesser rate. The amount paid to the Government in such cases to that extent does not constitute tax.

The said Circular, however, did not cover a situation where the tax is deducted at a rate prescribed in the relevant DTAA which is higher than the rate prescribed in the Income-tax Act, 1961. Since the law requires deduction of tax at a rate prescribed in the relevant DTAA or under the Income-tax Act, 1961 whichever is lower, there is a possibility that in such cases excess tax is deducted relying on the provisions of relevant DTAA.

Accordingly, in order to remove the genuine hardship faced by the resident deductor, the Board has modified Circular No. 07/2007, dated 23-10-2007 to the effect that the beneficial provisions under the said Circular allowing refund of tax deducted at source under section 195 to the person deducting tax at source shall also apply to those cases where deduction of tax at a higher rate under the relevant DTAA has been made while a lower rate is prescribed under the domestic law.

3.22 TDS on income from Deep Discount Bonds

- (1) The tax treatment of income from Deep Discount Bonds has been explained in the CBDT's Circular No.2/2002 dated 15.2.2002.
- (2) Circular No.4/2004 dated 13.5.2004 issued by the CBDT clarifies that tax is required to be deducted at source under section 193 or 195, as the case may be, only at the time of redemption of such bonds, irrespective of whether the income from the bonds has been declared by the bond-holder on accrual basis from year to year or is declared only in the year of redemption.
- (3) A person, who has declared the income from a Deep Discount Bond on annual accrual basis during the term of the bond, is entitled to make an application under section 197, requesting the Assessing Officer to issue a certificate for no deduction of tax or deduction at a lower rate. In such a case, the assessee should furnish, along with the prescribed Form No.13, details of the income offered for tax by him from year to year.
- (4) In case the assessee is not the original subscriber, and has acquired the bonds from some other person, he shall furnish the relevant particulars including the name, address and PAN of such other person.
- (5) If the Assessing Officer is satisfied that the applicant assessee has declared his income from the bonds from year to year on accrual basis during the period the bond was held by him, he shall issue a certificate allowing the tax deduction at source at such reduced rate as is justified by the total income of the applicant in the year of redemption.
- (6) An assessee, being a resident individual, who is the original subscriber of a Deep Discount Bond, may furnish a declaration in Form No.15H in the year of redemption in accordance with section 197A, if he has been declaring income on the bond from year to year on accrual basis, and no tax is payable on his total income, including the interest accruing during that year.
- (7) However, such a declaration cannot be filed by an individual, other than a senior citizen being a resident individual of the age of 65 years or more during the relevant previous year, if the amount of accumulated interest, being paid on redemption, exceeds the maximum amount not chargeable to tax in his case.

3.23 Income payable net of tax [Section 195A]

- (1) Where, under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon, be equal to the net amount payable under such agreement or arrangement.
- (2) However, no grossing up is required in the case of tax paid [under section 192(1A)] by an employer on the non-monetary perquisites provided to the employee.

3.24 Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations [Section 196]

- (1) No deduction of tax shall be made by any person from any sums payable to -
- (i) the Government; or
- (ii) the Reserve Bank of India; or
- (iii) a corporation established by or under a Central Act, which is, under any law for the time being in force, exempt from income-tax on its income; or
- (iv) a Mutual Fund specified under section 10(23D).
- (2) This provision for non-deduction is when such sum is payable to the above entities by way of -
- (i) interest or dividend in respect of securities or shares -
 - (a) owned by the above entities; or
 - (b) in which they have full beneficial interest or
- (ii) any income accruing or arising to them.

4. Certificate for deduction of tax at a lower rate [Section 197]

- (1) This section applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payment, as the case may be at the rates in force as per the provisions of sections 192, 193,194,194A, 194C, 194D, 194G, 194H, 194-I, 194J 194K, 194LA and 195.
- (2) In such cases, the assessee can make an application to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax.
- (3) If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, as the case may be, he may give to the assessee such certificate, as may be appropriate.
- (4) Where the Assessing Officer issues such a certificate, then the person responsible for paying the income shall deduct income-tax at such lower rates specified in the certificate or deduct no tax, as the case may be, until such certificate is cancelled by the Assessing Officer.
- (5) Enabling powers have been conferred upon the CBDT to make rules for prescribing the procedure in this regard.

5. No Deduction in Certain Cases [Section 197A]

(1) This section enables an individual, who is resident in India and whose estimated total income of the previous year is less than the basic exemption limit, to receive dividends and any sum out of National Savings Scheme Account, without deduction of tax at source under sections 194 and 194EE, on furnishing a declaration in duplicate in the prescribed form and verified in the prescribed manner [Sub-section (1)].

- (2) The declaration in the above form is to be furnished by the declarant to the person responsible for paying any income of the nature referred to in sections 194 or 194EE. The declaration will have to be to the effect that the tax on the estimated total income of the declarant of the previous year in which such income is to be included in computing his total income will be nil [Sub-section (1)].
- (3) No deduction of tax shall be made under sections 193 or 194A, where a person, who is not a company or a firm, furnishes to the person responsible for paying any income of the nature referred to in section 193 or 194A, a declaration in writing in duplicate in the prescribed form to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil [Sub-section (1A)].
- (4) The provisions of this section will, however, not apply where -
- (i) the amount of any income from dividends,
- (ii) payments in respect of deposits under National Savings Schemes, etc. or
- (iii) income from interest on securities or interest other than "interest on securities" or units or
- (iv) the aggregate of the amounts of such incomes in (1), (2) and (3) above credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax [Sub-section (1B)].
- (5) For a senior citizen, who is of the age of 60 years or more at any time during the previous year, no deduction of tax shall be made under section 193 or section 194 or section 194A or section 194EE, if they furnish a declaration in writing to the payer, of any amount or income mentioned in the above sections [Sub-section (1C)].
- (6) Such declaration should be in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil. The restriction contained in sub-section (1B) will not apply to senior citizens [Sub-section (1C)].
- (7) No deduction of tax shall be made by an Offshore Banking Unit from the interest paid on-
- (i) deposit made by a non-resident/not-ordinarily resident on or after 1.4.2005; or
- (ii) borrowing from a non-resident/not-ordinarily resident on or after 1.4.2005.

This provision is contained in sub-section (1D).

- (8) No deduction of tax at source shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred in section 10(44).
- (9) No deduction of tax shall be made from specified payments to such institution, association or body or class of institutions or associations or bodies as may be notified by the Central Government in the Official Gazette in this behalf. Therefore, in respect of such specified payments made to notified bodies, no tax is to be deducted at source.

Accordingly, the Central Government has notified that no deduction of tax shall be made from the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a

foreign bank -

- (i) bank guarantee commission,
- (ii) cash management service charges,
- (iii) depository charges on maintenance of DEMAT accounts ,
- (iv) charges for warehousing services for commodities,
- (v) underwriting service charges,
- (vi) clearing charges (MICR charges) and
- (vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank,
- (10) On receipt of the declaration referred to in sub-section (1), (1A) or (1C), the person responsible for making the payment will be required to deliver or cause to be delivered to the Chief Commissioner or Commissioner, one copy of the declaration on or before the 7th day of the month following the month in which the declaration is furnished to him [Section 197A(2)].

6. Miscellaneous Provisions

6.1 Tax deducted is income received [Section 198]

- (1) All sums deducted in accordance with the foregoing provisions shall, for the purpose of computing the income of an assessee, be deemed to be income received.
- (2) However, the tax paid by an employer under sub-section (1A) of section 192 on non-monetary perquisites provided to the employees, shall not be deemed to be income received by the assessee.

6.2 Credit for tax deducted at source [Section 199]

- (1) Tax deducted at source in accordance with the above provisions and paid to the credit of the Central Government shall be treated as payment of tax on behalf of the-
- (i) person from whose income the deduction was made; or
- (ii) owner of the security; or
- (iii) depositor; or
- (iv) owner of property; or
- (v) unit-holder; or
- (vi) shareholder.
- (2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government, shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made.
- (3) The CBDT is empowered to frame rules for the purpose of giving credit in respect of tax

deducted or tax paid under Chapter XVII. The CBDT also has the power to make rules for giving credit to a person other than the persons mentioned in (1) and (2) above. Further, the CBDT can specify the assessment year for which such credit may be given.

(4) Rule 37BA – Credit for tax deducted at source for the purposes of section 199

Rule 37BA(1) provides that credit for tax deducted at source and paid to the Central Government shall be given to the person to whom the payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

Clause (i) of Rule 37BA(2) provides that where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee.

However, the deductee should file a declaration with the deductor and the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1) of Rule 37BA.

6.3 Duty of person deducting tax [Section 200]

- (1) The persons responsible for deducting the tax at source should deposit the sum so deducted to the credit of the Central Government within the prescribed time [Sub-section (1)].
- (2) Further, an employer paying tax on non-monetary perquisites provided to employees in accordance with section 192(1A), should deposit within the prescribed time, the tax to the credit of the Central Government or as the Board directs [Sub-section (2)].

Rule 30 – Prescribed time and mode of payment to Government account of TDS or tax paid under section 192(1A)

- (a) All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.
- (b) All sums deducted in accordance with Chapter XVII-B by deductors other than a Government office shall be paid to the credit of the Central Government on or before 30th April, where the income or amount is credited or paid in the month of March. In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A).
- (c) In special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192/194A/194D/194H on or before 7th of the month following the quarter, in respect of first three quarters in the financial year and 30th April in respect of the quarter ending on 31st March. The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and

30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.

- (3) Sub-section (3) casts responsibility on the following persons –
- (i) any person deducting any sum on or after 1st April, 2005 in accordance with the foregoing provisions of this chapter; or,
- (ii) any person being an employer referred to in section 192(1A).
- (4) These persons are responsible for preparing such statements for such periods as may be prescribed, after paying the tax deducted to the credit of the Central Government within the prescribed time.
- (5) Such statements have to be delivered or caused to be delivered to the prescribed income-tax authority or the person authorised by such authority.
- (6) Such statements should be in the prescribed form and verified in the prescribed manner.
- (7) It should set forth such particulars and should be delivered within such time as may be prescribed.
- (8) The deductor may also deliver to the prescribed authority, a correction statement -
- (a) for rectification of any mistake; or
- (b) to add, delete or update the information furnished in the statement delivered under section 200(3).
- (9) Every person responsible for deduction of tax under Chapter XVII-B shall deliver, or cause to be delivered, the following quarterly statements to the DGIT (Systems) or any person authorized by him, in accordance with section 200(3):
- (i) Statement of TDS under section 192 in Form No.24Q;
- (ii) Statement of TDS under sections 193 to 196D in Form No.26Q in respect of all deductees other than a deductee being a non-resident not being a company or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No.27Q.

Rule 31A - Time limit for submission of quarterly statements

Date of ending of the quarter of the financial year	Due date in the case of a deductor, being an office of Government	Due date in case of other deductors
30th June	31st July of the financial year	15th July of the financial year
30th September	31st October of the financial year	15th October of the financial year
31st December	31st January of the financial year	15th January of the financial year
31st March	15th May of the financial year immediately following the financial year in which deduction is made	15th May of the financial year immediately following the financial year in which deduction is made

6.4 Correction of arithmetic mistakes and adjustment of incorrect claim during computerized processing of TDS statements [Section 200A]

- (i) At present, all statements of tax deducted at source are filed in an electronic mode, thereby facilitating computerised processing of these statements.
- (ii) Therefore, in order to process TDS statements on computer, electronic processing on the same lines as processing of income-tax returns has been provided in section 200A with effect from 1st April, 2010.
- (iii) The following adjustments can be made during the computerized processing of statement of tax deducted at source *or a correction statement* –
- (1) any arithmetical error in the statement; or
- (2) an incorrect claim, if such incorrect claim is apparent from any information in the statement.

The term "an incorrect claim apparent from any information in the statement" shall mean such claim on the basis of an entry, in the statement, –

- (a) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (b) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of the Act.
- (iv) After making such adjustments, tax and interest [say, under section 201(1A)] would be calculated and sum payable by the deductor or refund due to the deductor will be determined.
- (v) An intimation will be sent to the deductor, informing him of his tax liability or the refund due, within one year from the end of the financial year in which the statement is filed. The refund due shall be granted to the deductor.
- (vi) For this purpose, the CBDT is empowered to make a scheme for centralized processing of statements of TDS to determine the tax payable by, or refund due to, the deductor.

6.5 Consequences of failure to deduct or pay [Section 201]

- (1) The following persons shall be deemed to be an assessee in default if they do not deduct the whole or any part of the tax or after deducting fails to pay the tax -
- (i) any person including the principal officer of a company, who is required to deduct any sum in accordance with the provisions of the Act; and
- (ii) an employer paying tax on non-monetary perguisites under section 192(1A).
- (2) However, any person (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee –
- (1) has furnished his return of income under section 139;
- (2) has taken into account such sum for computing income in such return of income; and

- (3) has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.
- (3) Further, no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that such person has failed to deduct and pay the tax without good and sufficient reasons.
- (4) A person deemed to be an assessee-in-default under section 201(1), for failure to deduct tax or to pay the tax after deduction, is liable to pay simple interest @ 1% for every month or part of month on the amount of such tax from the date on which tax was deductible to the date on which such tax was actually deducted and simple interest @ 1½% for every month or part of month from the date on which tax was deducted to the date on which such tax is actually paid [Section 201(1A)].

Illustration 5

An amount of ₹ 40,000 was paid to Mr. X on 1.7.2014 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 28.2.2015, from which tax@10% (amounting to ₹ 9,000) on the entire amount of ₹ 90,000 was deducted. However, this tax of ₹ 9,000 was deposited only on 22.6.2015. Compute the interest chargeable under section 201(1A).

Solution

Interest under section 201(1A) would be computed as follows –

Particulars	₹
1% on tax deductible but not deducted i.e., 1% on ₹ 4,000 for 8 months	320
1½% on tax deducted but not deposited i.e. 1½% on ₹ 9,000 for 4 months	540
	860

- (5) Such interest should be paid before furnishing the statements in accordance with section 200(3).
- (6) Where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default under section 201(1) on account of payment of taxes by such resident payee, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee. The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.
- (7) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the person or the company, as the case may be.
- (8) No order under section 201(1), deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India, shall

be passed at any time after the expiry of <u>seven</u> years from the end of the financial year in which the payment is made or credit is given.

- (9) Further, the exclusions from the time limit, as specified in *Explanation 1* to section 153, would also apply to the above time limit for passing an order deeming a person to be an assessee-in-default. Also, the time limit would not apply to an order passed consequent to the direction contained in an order of the Commissioner under sections 263 and 264, Commissioner (Appeals) under section 250, Appellate Tribunal under section 254, Supreme Court/National Tax Tribunal under section 260 and Supreme Court under section 262. Thus, the time limit would be extended where effect is to be given to various appellate proceedings or where proceedings are stayed.
- (10) Section 201(1) deems a person to be an assessee-in-default if he -
- (i) does not deduct tax; or
- (ii) does not pay; or
- (iii) after so deducting fails to pay

the whole or any part of the tax, as required by or under this Act.

Thus, section 201(1) contemplates three types of defaults. The default contemplated in (ii) is covered by the default contemplated in (iii). However, the time limit has been specified only for passing of orders relating to default contemplated in (i) above. There is no time limit specified in respect of the other defaults.

- (11) Therefore, no time-limits have been prescribed for the order under section 201(1) where –
- (i) the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,
- (ii) the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perguisites,
- (iii) the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

6.6 Deduction only one mode of recovery [Section 202]

- (1) Recovery of tax through deduction at source is only one method of recovery.
- (2) The Assessing Officer can use any other prescribed methods of recovery in addition to tax deducted at source.

6.7 Certificate for tax deducted [Section 203]

- (1) Every person deducting tax at source shall issue a certificate to the effect that tax has been deducted and specify the amount so deducted, the rate at which tax has been deducted and such other particulars as may be prescribed.
- (2) Every person, being an employer, referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income

such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

Certificate of TDS to be furnished under section 203 [Rule 31]

The certificate of deduction of tax at source to be furnished under section 203 shall be in Form No.16 in respect of tax deducted or paid under section 192 and in any other case, Form No.16A.

Form No.16 shall be issued to the employee annually by 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted. Form No.16A shall be issued quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A.

6.8 Common number for TDS and TCS [Section 203A]

- (1) Persons responsible for deducting tax or collecting tax at source should apply to the Assessing Officer for the allotment of a "tax-deduction and collection-account number".
- (2) Section 203A(2) enlists the documents/certificates/returns/challans in which the "tax deduction account number" or "tax collection account number" or "tax deduction and collection account number" has to be compulsorily quoted. They are -
- (i) challans for payment of any sum in accordance with the provisions of section 200 or section 206C(3);
- (ii) certificates furnished under section 203 or section 206C(5);
- (iii) statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3) or section 206C(3).
- (iv) returns delivered in accordance with the provisions of section 206 or section 206C(5A)/(5B); and
- (v) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

6.9 Furnishing of statement of tax deducted [Section 203AA]

- (1) This section provides for furnishing of a statement of the tax deducted on or after 1st April, 2008 by the prescribed income-tax authority or the person authorised by such authority referred to in section 200(3)
- (2) Such statement should be prepared and delivered to every person -
- (a) from whose income, tax has been deducted or
- (b) in respect of whose income, tax has been paid.
- (3) Such statement should be in the prescribed form specifying the amount of tax deducted or paid and other prescribed particulars.

6.10 Person responsible for paying taxes deducted at source [Section 204]

For purposes of deduction of tax at source the expression "person responsible for paying" means:

	Nature of income/payment	Person responsible for paying tax
(1)	Salary (other than payment of salaries by the Central or State Government)	(i) the employer himself; or(ii) if the employer is a company, the company itself, including the principal officer thereof.
(2)	Interest on securities (other than payments by or on behalf of the Central or State Government)	the local authority, corporation or company, including the principal officer thereof.
(3)	Any sum payable to a non- resident Indian, representing consideration for the transfer by him of any foreign exchange asset, which is not a short term capital asset	the "Authorised Person" responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Management Act, 1999 and any rules made thereunder.
(4)	Credit / payment of any other sum chargeable under the provisions of the Act	(i) the payer himself; or (ii) if the payer is a company, the company itself including the principal officer thereof.
(5)	Credit / payment of any sum chargeable under the provisions of the Act made by or on behalf of the Central Government or the Government of a State.	(i) the drawing and disbursing officer; or (ii) any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum.

6.11 Bar against direct demand on assessee [Section 205]

Where tax is deductible at source under any of the aforesaid sections, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

6.12 Furnishing of statements in respect of payment of interest to residents without deduction of tax [Section 206A]

- (1) This section casts responsibility on every banking company or co-operative society or public company referred to in the proviso to section 194A(3)(i) to prepare such statements for such period as may be prescribed –
- if they are responsible for paying to a resident,
- the payment should be of any income not exceeding ₹ 10,000, where the payer is a banking company or a co-operative society, and ₹ 5,000 in any other case.
- such income should be by way of interest (other than interest on securities)

- (2) The statements have to be delivered or caused to be delivered to the prescribed incometax authority or the person authorised by such authority.
- (3) The statements have to be in the prescribed form, verified in the prescribed manner and to be filed within the prescribed time, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.
- (4) The Central Government may, by notification in the Official Gazette, cast responsibility on any person other than a person mentioned in (1) above.
- (5) Such persons would be persons responsible for paying to a resident any income liable for deduction of tax at source.
- (6) Such persons are vested with the responsibility to prepare and deliver or cause to be delivered statements within the prescribed time to the prescribed income-tax authority or the person authorized by such authority.
- (7) Such statements should be in the prescribed form and verified in the prescribed manner.
- (8) Such statements should be on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

6.13 Mandatory requirement of furnishing PAN in all TDS statements, bills, vouchers and correspondence between deductor and deductee [Section 206AA]

- (i) The non-quoting of PAN by deductees in many cases have led to delay in issue of refund on account of problems in the processing of returns of income and in granting credit for tax deducted at source.
- (ii) With a view to strengthening the PAN mechanism, section 206AA provides that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –
- (1) the rate prescribed in the Act;
- (2) at the rate in force i.e., the rate mentioned in the Finance Act; or
- (3) at the rate of 20%.

For instance, in case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194I. However, non-furnishing of PAN by the deductee in case of income by way of winnings from lotteries, card games etc., would result in tax being deducted at the existing rate of 30% under section 194B. Therefore, wherever tax is deductible at a rate higher than 20%, this provision would not have any impact.

- (iii) Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.
- (iv) Further, no certificate under section 197 will be granted by the Assessing Officer unless

the application contains the PAN of the applicant.

- (v) If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the rate specified in (ii) above.
- (vi) These provisions will also apply to non-residents where tax is deductible on payments or credits made to them. However, the provisions of section 206AA shall not apply in respect of payment of interest on long-term bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.
- (vii) Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

7. Advance Payment of Tax [Sections 207 to 219]

7.1 Liability for payment of advance tax

- (1) Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219, in respect of an assessee's current income i.e. the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year [Section 207].
- (2) Under section 208, obligation to pay advance tax arises in every case where the advance tax payable is ₹ 10,000 or more.
- **Note** An assessee who is liable to pay advance tax of less than ₹ 10,000 will not be saddled with interest under sections 234B and 234C for defaults in payment of advance tax. However, the consequences under section 234A regarding interest for belated filing of return would be attracted.
- (3) In case of senior citizens who have passive source of income like interest, rent, etc., the requirement of payment of advance tax causes genuine compliance hardship. Therefore, in order to reduce the compliance burden on such senior citizens, exemption from payment of advance tax has now been provided to a resident individual-
- (1) not having any income chargeable under the head "Profits and gains of business or profession"; and
- (2) of the age of 60 years or more.

Such senior citizens need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

7.2 Computation of advance tax

(1) An assessee has to estimate his current income and pay advance tax thereon. He need not submit any estimate or statement of income to the Assessing Officer, except where he has been served with notice by the Assessing Officer.

- (2) Where an obligation to pay advance tax has arisen, the assessee shall himself compute the advance tax payable on his current income at the rates in force in the financial year and deposit the same, whether or not he has been earlier assessed to tax.
- (3) In the case of a person who has been already assessed by way of a regular assessment in respect of the total income of any previous year, the Assessing Officer, if he is of the opinion that such person is liable to pay advance tax, can serve an order under section 210(3) requiring the assessee to pay advance tax.
- (4) For this purpose, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income for any subsequent previous year, whichever is higher, shall be taken as the basis for computation of advance tax payable.
- (5) The above order can be served by the Assessing Officer at any time during the financial year but not later than the last date of February.
- (6) If, after sending the above notice, but before 1st March of the financial year, the assessee furnishes a return relating to any later previous year or an assessment is completed in respect of a later return of income, the Assessing Officer may amend the order for payment of advance tax on the basis of the computation of the income so returned or assessed.
- (7) If the assessee feels that his own estimate of advance tax payable would be less than the one sent by the Assessing Officer, he can file estimate of his current income and advance tax payable thereon.
- (8) Where the advance tax payable on assessee's estimation is higher than the tax computed by the Assessing Officer, then, the advance tax shall be paid based upon such higher amount.
- (9) In all cases, the tax calculated shall be reduced by the amount of tax deductible at source.

No reduction of 'tax deductible but not deducted' while computing advance tax liability

- (i) As per the provisions of section 209, the amount of advance tax payable by a person is computed by reducing the amount of income-tax which would be deductible at source during the financial year from any income which has been taken into account in computing the total income.
- (ii) Some courts have opined that in case where the payer pays any amount (on which tax is deductible at source) without deduction of tax at source, the payee shall not be liable to pay advance tax to the extent tax is deductible from such amount.
- (iii) With a view to make such a person (payee) liable to pay advance tax, the proviso to section 209(1)(d) provides that the amount of tax deductible at source but not so deducted by the payer shall not be reduced from the income tax liability of the payee for determining his liability to pay advance tax.
- (iv) In effect, only if tax has actually been deducted at source, the same can be reduced for

computing advance tax liability of the payee. Tax deductible but not so deducted cannot be reduced for computing advance tax liability of the payee.

- (10) The amount of advance tax payable by an assessee in the financial year calculated by -
- (i) the assessee himself based on his estimation of current income; or
- (ii) the Assessing Officer as a result of an order under section 210(3) or amended order under section 210(4)

is subject to the provisions of section 209(2), as per which the net agricultural income has to be considered for the purpose of computing advance tax.

7.3 Installments of advance tax and due dates

(1) Advance tax shall be payable by companies and other assessees as per the following schedule of installments:

Companies - Four installments

Due date of installment	Amount payable
On or before the 15th June	Not less than 15% of advance tax liability.
On or before the 15th September	Not less than 45% of advance tax liability, as reduced by the amount, if any, paid in the earlier installment.
On or before the 15th December	Not less than 75% of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier installment or installments.
On or before the 15th March	The whole amount of advance tax liability as reduced by the amount or amounts, if any, paid in the earlier installment or installments.

Non-corporate assessees - Three installments

Due date of installment	Amount payable
On or before the 15th September	Not less than 30% of advance tax liability
On or before the 15th December	Not less than 60% of advance tax liability, as reduced by the amount, if any, paid in the earlier installment.
On or before the 15th March	the whole amount of such advance tax as reduced by the amount or amounts, if any, paid in the earlier installment or installments.

(2) The last date for payment of the whole amount of advance tax is 15th March of the relevant financial year. However, any amount paid by way of advance tax on or before 31st

March is also considered as advance tax paid for the financial year. Interest liability for late payment will arise in such a case.

- (3) If the last day for payment of any installment of advance tax is a day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the mandatory interest leviable under sections 234B and 234C would not be charged.
- (4) Where advance tax is payable by virtue of the notice of demand issued under section 156 by the Assessing Officer, the whole or the appropriate part of the advance tax specified in such notice shall be payable on or before each of such due dates as fall after the date of service of notice of demand.
- (5) Where the assessee does not pay any installment by the due date, he shall be deemed to be an assessee in default in respect of such installment.

7.4 Payment of advance tax in case of capital gains/casual income [Proviso to section 234C]

- (1) Advance tax is payable by an assessee on his/its total income, which includes capital gains and casual income like income from lotteries, crossword puzzles etc.
- (2) Since it is not possible for the assessee to estimate his capital gains, income from lotteries, etc., it has been provided that if any such income arises after the due date for any installment, then, the entire amount of tax payable (after considering tax deducted at source) on such capital gains or casual income should be paid in the remaining installments of advance tax which are due.
- (3) Where no such installment is due, the entire tax should be paid by 31st March of the relevant financial year.
- (4) No interest liability would arise if the entire tax liability is so paid.

Note: In case of casual income (winnings from lotteries, crossword puzzles, card games, gambling, betting, races including horse races etc.), the entire tax liability is fully deductible at source@30% under section 194B and 194BB. Therefore, advance tax liability would arise only in respect of the education cess and secondary and higher education cess element of such tax, if the same, along with tax liability in respect of other income, if any, is ₹ 10,000 or more.

7.5 Credit for advance tax [Section 219]

Any sum, other than interest or penalty, paid by or recovered from an assessee as advance tax, is treated as a payment of tax in respect of the income of the previous year and credit thereof shall be given in the regular assessment.

7.6 Interest for non-payment or short-payment of advance tax [Section 234B]

(1) Interest under section 234B is attracted for non-payment of advance tax or payment of advance tax of an amount less than 90% of assessed tax.

- (2) The interest liability would be 1% per month or part of the month from 1st April following the financial year upto the date of determination of income under section 143(1).
- (3) Such interest is calculated on the amount of difference between the assessed tax and the advance tax paid.
- (4) Assessed tax is the tax calculated on total income less tax deducted at source.

7.7 Interest payable for deferment of advance tax [Section 234C]

- (1) Interest under section 234C is attracted for deferment of advance tax beyond the due dates.
- (2) The interest liability would be 1% per month, for a period of 3 months, for every deferment.
- (3) However, for the last installment of 15th March, the interest liability under this section would be 1% for one month.
- (4) The interest is to be calculated on the difference between the amount arrived at by applying the specified percentage of tax on returned income and the actual amount paid by the due date.